UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
	:	**No. 3:18-CR-203 (VLB)**
v.	:	
	:	
JAYREN JAKAR WYNN,	:	**May 6, 2019**
Defendants.	:	
	:	

MEMORANDUM OF DECISION ON MOTION TO SUPPRESS [DKT. 20]

Jayren Wynn has been charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Before the Court is a motion to suppress the firearm found during the police search of the trunk of Mr. Wynn's vehicle on July 12, 2018 and the subsequent statements made by Mr. Wynn to police. *See* [Dkt. 20 (Mot. to Suppress)]. Mr. Wynn argues that the search was unconstitutional because the police did not have probable cause to search the trunk of his vehicle and neither the search incident to arrest nor automobile exception applies. The Court DENIES Defendant's motion to suppress for the reasons explained below.

I. Factual Background

The following facts are taken from the exhibits to the motion. *See* [Dkt. 22 (Mot. to Suppress Exs.)]. On July 12, 2018, at approximately 1:30 p.m., New Haven Police Department ("NHPD") Detectives Sanchez and Glynn approached Mr. Wynn's blue Nissan Altima after a record check of the vehicle's license plate showed that the plate corresponded to a beige Nissan Altima. Upon noticing the Detectives approaching, with badges visible, Mr. Wynn immediately exited the vehicle from the driver's seat. Detective

Sanchez instructed Mr. Wynn to sit back in the vehicle and produce his license and registration. Mr. Wynn complied.

The Detectives observed the smell of marijuana emanating from the vehicle and asked Mr. Wynn if he had been smoking in the vehicle. Mr. Wynn responded in the affirmative and Detective Sanchez asked Mr. Wynn to step out of the vehicle. The two women in the vehicle with Mr. Wynn exited as well. As he was exiting, Mr. Wynn stated that there was marijuana in the vehicle. The Detectives saw a small clear bag containing marijuana in plain view in the center console cup holder of the vehicle. They placed Mr. Wynn in handcuffs and sat him on the curb and the Detectives searched the rest of the vehicle. In the trunk of the vehicle the officers found a semiautomatic handgun wrapped in a t-shirt inside a plastic bag.

Prior to the encounter, Lieutenant K. Jacobson had informed the Detectives that Mr. Wynn had been prosecuted as a result of a federal investigation involving illicit narcotics and illegal firearms. Record checks following the search revealed that the firearm serial number yielded "no record" and that Mr. Wynn had a felony conviction. The Detectives arrested Mr. Wynn for criminal possession of a firearm, weapon in a motor vehicle, and possession of marijuana and transported him to the New Haven Police Department. Mr. Wynn was read his *Miranda* warnings and agreed to speak with the police. In a video-recorded interview, Mr. Wynn told police that he had purchased the firearm for $350 and carried it for protection.

II. Legal Standard

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S.

Const. amend. IV. A defendant who files a motion to suppress articles seized and information obtained without a warrant bears the burden of showing his or her Fourth Amendment rights were violated. *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978).

The defendant must first prove that he had a legitimate expectation of privacy in the place searched and items seized. *See United States v. Osorio*, 949 F.2d 38, 40 (2d Cir. 1991). The defendant must then prove that the search was conducted without a warrant, as a law enforcement official must obtain a search warrant in order to search or seize an individual's property unless an exception applies. *See Maryland v. Dyson*, 527 U.S. 465, 466 (1999) (per curiam); *United States v. Jenkins*, 876 F.2d 1085, 1088 (2d Cir. 1989). Warrantless searches are presumptively unreasonable. *Kentucky v. King*, 563 U.S. 452, 459 (2011); *Katz v. United States*, 389 U.S. 347, 357 (1967). If the defendant succeeds in showing that the officers conducted a warrantless search, the burden shifts back to the Government to show that the search fell within one of the exceptions to the warrant requirement. *United States v. Kiyuyung*, 171 F.3d 78, 83 (2d Cir. 1999) (exceptions are "specifically established and well-delineated"). Thus, a defendant bears the initial burden of proof on a motion to suppress, but where the "defendant establishes some factual basis for the motion, the burden of proof shifts to the Government to show that the search was lawful." *United States v. Breckenridge*, 400 F. Supp. 2d 434, 437 (D. Conn. 2005); *United States v. O'Neill*, No. 15-CR-151W, 2016 WL 6802644, at *8 (W.D.N.Y. Nov. 17, 2016) (same). Ultimately, the party carrying the burden must do so by a preponderance of the evidence. *O'Neill*, 2016 WL 6802644, at *8.

III. Discussion

Mr. Wynn moves to suppress the gun found by police during a warrantless search on July 12, 2018 and his subsequent statements, arguing that Detectives Sanchez and Glynn did not have probable cause to search the trunk of his car. [Dkt. 21 (Mem. in support of Mot. to Suppress) at 1-2].

As a preliminary matter, the Court finds that the Detectives' investigatory stop of Mr. Wynn and the vehicle was proper.[1] A police officer may conduct a brief investigatory stop if he or she has "reasonable suspicion supported by articulable facts that criminal activity 'may be afoot[.]'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The officer "must be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *Id.* (internal quotation marks omitted). "The Fourth Amendment requires some minimal level of objective justification for making the stop." *Id.* Here, the Detectives' record check revealed that the color of Mr. Wynn's vehicle did not match the registration. The Court concludes that this discrepancy supported a reasonable suspicion of misuse of a marker under Connecticut General Statute § 14-147(c)[2] or that the vehicle may have been stolen. *See United States v. Cooper*, 431 F. App'x 399, 402 (6th Cir. 2011) (holding that a discrepancy between the

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[1] Mr. Wynn does not argue that the investigatory stop was not supported by reasonable suspicion in his Motion, focusing only on the legality of the search. But, in his Reply Memorandum in response to the United States' Opposition Memorandum, Mr. Wynn briefly argues that the car color discrepancy was insufficient to provide reasonable suspicion for the stop. [Dkt. 24 at 7-9].

[2] Conn. Gen. Stat. § 14-147(c) provides that "[n]o person shall use any motor vehicle registration or operator's license other than the one issued to him by the commissioner, except as provided in section 14-18; and no person shall use a motor vehicle registration on any motor vehicle other than that for which such registration has been issued. Any person who violates any provision of this subsection shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both."

color of a vehicle and its registration in conjunction with the officer's experience that such a discrepancy could indicate car theft sufficed to establish reasonable suspicion); *State v. Hawkins*, 101 N.E. 3d 520, 525-26 (Ohio Ct. App. 2018) (holding that the discrepancy in the vehicle's color and the officer's experience provided reasonable suspicion to authorize the stop); *Andrews v. State*, 658 S.E. 2d 126, 127-28 (Ga. Ct. App. 2008) (same); *Smith v. State*, 713 N.E. 2d 338, 342 (Ind. App. 1999) (holding vehicle color discrepancy gave officer reasonable suspicion to believe the vehicle had mismatched plate and could be stolen or retagged); *State v. Creel*, No. 38658, 2012 WL 9494147, at *2 (Idaho Ct. App. Aug. 7, 2012) (same). The arresting officer stated he stopped the vehicle because the marker did not match the vehicle to which it was affixed.

Mr. Wynn contends that he had a reasonable expectation of privacy in the vehicle and its contents—Mr. Wynn's mother, the registered owner, loaned him the vehicle, he was the primary driver of the vehicle and was driving it at the time of the search. [Dkt. 21 at 8]. The United States does not challenge Mr. Wynn's claimed expectation of privacy and the Court concludes that he had one based on the facts. *See United States v. Ponce*, 947 F.2d 646, 649 (2d Cir. 1991) ("To mount a challenge to a search of a vehicle, defendants must show, among other things, a legitimate basis for being in it, such as permission from the owner.").

The agreed upon facts establish that the Detectives did not have a warrant for the search conducted. "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote omitted). Among the exceptions to the warrant

requirement are a search incident to a lawful arrest and the automobile exception. *Arizona v. Gant*, 556 U.S. 332, 338 (2009). In *Arizona v. Gant*, the Court held that "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest." 556 U.S. at 351. Under the automobile exception, "police may conduct a warrantless search of a readily mobile motor vehicle if probable cause exists to believe the vehicle contains contraband or other evidence of a crime." *United States v. Gaskin*, 364 F.3d 438, 456 (2d Cir. 2004). The United States contends that Detectives Sanchez and Glynn's search was lawful under both of these exceptions, though it only provides substantive arguments regarding the automobile exception.

A. <u>Evidentiary Hearing</u>

"[A]n evidentiary hearing on a motion to suppress ordinarily is required if 'the moving papers are sufficiently definite, specific, detailed, and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question.'" *United States v. Pena*, 961 F.2d 333, 339 (2d Cir. 1992) (quoting *United States v. Licavoli*, 604 F.2d 613, 621 (9th Cir. 1979)). "[A] defendant seeking to suppress evidence bears the burden of demonstrating disputed issues of fact that would justify an evidentiary hearing." *United States v. Diaz*, 303 F. Supp. 2d 84, 93 (D. Conn. 2004) (citing *United States v. Culotta*, 413 F.2d 1343, 1345 (2d Cir. 1969)). Further, a defendant seeking a hearing must submit "an affidavit of someone alleging personal knowledge of the relevant facts." *United States v. Barrios*, 210 F.3d 355, 2000 WL 419940, at *1 (2d Cir. Apr. 18, 2000) (citing *United States v. Gillette*, 383 F.2d 843, 848 (2d Cir. 1967)).

In his Reply Memorandum, *see* [Dkt. 24 at 2], Mr. Wynn agrees with the United States that his motion to suppress may be resolved based upon the facts set forth in the papers, including the exhibits to his motion—the Affidavit, the Incident/Investigation Report, and the pictures of the bag of marijuana found in Mr. Wynn's vehicle. [Dkt. 22 (Exs. to Mot. to Suppress)]. The Court agrees and accordingly did not hold a hearing on the instant motion.

B. Automobile Exception

"If there is probable cause to believe a vehicle contains evidence of criminal activity, [the automobile exception] authorizes a search of any area of the vehicle in which the evidence might be found." *Arizona v. Gant*, 556 U.S. 332, 347 (2009) (citing *United States v. Ross*, 456 U.S. 798, 820-21 (1982)). In other words, "if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *United States v. Howard*, 489 F.3d 484, 494 (2d Cir. 2007) (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)). This is because automobiles are both "inherently mobile, and therefore "readily put out of reach of a search warrant," and because "citizens possess a reduced expectation of privacy in their vehicles." *United States v. Navasi*, 597 F.3d 492, 497-98 (2d Cir. 2010). Mr. Wynn argues that the Detectives did not have probable cause to believe the vehicle contained contraband beyond the small bag of marijuana in plain view in the passenger compartment and thus lacked probable cause to continue their search to the trunk.[3]

Probable cause exists "where the totality of circumstances indicates a 'fair probability that contraband or evidence of a crime will be found in a particular place.'"

[3] **The parties do not dispute that Mr. Wynn's vehicle was readily mobile.**

***Walczyk v. Rio*, 496 F.3d 139, 156 (2d Cir. 2007) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). "[P]robable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Instead, "a probable cause inquiry focuses on whether the evidence known to officers indicates a likelihood that items appropriate for seizure might be found at the location to be searched." *In re Terrorist Bombings of U.S. Embassies in E. Africa*, 553 F.3d 150, 151 (2d Cir. 2008). Consequently, even though "probable cause demands more than a 'mere suspicion' of wrongdoing," *Ganek v. Leibowitz*, 874 F.3d 73, 83 (2d Cir. 2017) (quoting *Mallory v. United States*, 354 U.S. 449, 454 (1957)), "it does not demand 'hard certainties.'" *Southerland v. City of New York*, 681 F.3d 122, 127 (2d Cir. 2012) (quoting *Illinois v. Gates*, 462 U.S. 213, 232 (1983)).**

The Government relies on several facts to establish probable cause for the search of Mr. Wynn's vehicle. It relies initially on the smell of marijuana emanating from the vehicle and the bag of marijuana in plain sight located in the center console. [Dkt. 23 at 8, 10]. The Government also references Mr. Wynn's preemptory exit from the vehicle when the Detectives approached, his admissions that he had been smoking marijuana and had marijuana in the car, and the Detectives' knowledge of Mr. Wynn's prior federal narcotics prosecution. *Id.* at 8-16.

Courts have held that the totality of similar circumstances establish a finding of probable cause to search a vehicle. In *United States v. Hampton*, officers stopped, for a minor traffic violation, a vehicle that had been linked to a gunshot incident that occurred several hours earlier. No. 3:17-CR-00084 (VLB), 2018 WL 340024, at *7 (D. Conn. 2018). In

response to the officers' alert, the driver pulled his car off to the side of the road and opened all of his windows in the middle of a New England winter. *Id.* When the officer requested the driver's license and registration, he observed a strong marijuana odor coming from the vehicle. *Id*. at *1. The officer instructed the driver to exit the vehicle and, when the driver complied, he observed a plastic bag of marijuana in the driver's side door panel. *Id*. at *1. The driver confirmed that it was marijuana and claimed that he had a medical marijuana card. *Id*. at *1. Because the marijuana was not in prescription packaging, the officer arrested the driver and searched his vehicle, discovering a handgun, a substantial amount of cash, and approximately 4.6 ounces of marijuana. *Id*. at *1-2. While the Court did not believe "that the odor of marijuana alone, where the officer did not state that he observed smoke or smelled 'burning' marijuana, and where the officer noted no evidence of impairment" justified an arrest for driving under the influence, the smell of marijuana combined with the driver's suspicious actions supported "reasonable conclusions that Defendant's possession or use at the time of the traffic stop was not lawful, and that additional evidence of illegal possession or use could be found within the vehicle." *Id*. at *7.

The court in *United States v. Wiggins*, No. 12–CR–6114L, 2013 WL 1645180 (W.D.N.Y. 2013) found probable cause existed to search under similar facts. In *Wiggins*, the court held a warrantless search pursuant to the automobile exception was constitutional because the officer detected the odor of marijuana coming from the vehicle, the defendant gave him a lit marijuana cigarette, and the defendant informed the officer that he had marijuana in his pocket. *Id.* at *12. The court held that "[w]here, as here, a vehicle emits the odor of a controlled substance, officers have probable cause to

search anywhere in the vehicle in which the controlled substance may be located." *Id*. at *12 (compiling cases). While the Second Circuit has not ruled definitively on the probable cause implications of the smell of marijuana, it presaged such a holding in *United States v. Carter*, by upholding a warrantless search finding that a marijuana cigarette in plain view on an open ashtray provided officers with probable cause to search the automobile. 173 F. App'x 79, 81 (2d Cir. 2006).

Additionally, Circuits that have addressed the role of marijuana odor, have concluded that it contributes to a finding of probable cause to search an entire vehicle for contraband. *United States v. Paige*, 870 F.3d 693, 703 (7th Cir. 2017) (holding that an officer had probable cause to believe an automobile contained more of the drugs which impaired the suspect and created the strong smell observed by the officer); *United States v. Taylor*, 162 F.3d 12, 21 (1st Cir. 1998) (holding that the strong odor of marijuana emanating from a car "provided probable cause for a search of the car for any narcotics").

Courts, including the Second Circuit, also generally recognize that suspicious behavior contributes to a finding of probable cause. *Harris v. United States*, 577 F. App'x 70, 72 (2d Cir. 2014) ("We have long recognized furtive activity and flight as supportive of probable cause to search a vehicle once it is stopped."). Such cases have typically considered furtive movement inside a car or attempts to flee from the police. *See, e.g.*, *Harris*, 577 F. App'x at 72 (probable cause based on suspicious movements in the car and an attempt to get away from the police); *United States v. Pughe*, 441 F. App'x 776, 778 (2d Cir. 2011) (probable cause based in part of furtive movements inside car suggesting attempt to hide narcotics); *United States v. Martinez-Cortez*, 566 F.3d 767, 771, n.3 (8th Cir. 2009) (probable cause based on defendant's refusal to follow officer's instructions

and attempts to hide something inside his vehicle); *United States v. White*, 298 F. Supp. 3d 451, 460-61 (E.D.N.Y. 2018) (probable cause to search based on suspicious movements inside vehicle after pulling over). Mr. Wynn's behavior was similarly suspicious, though in a different manner. The Detectives observed Mr. Wynn "immediately exit[] the Altima upon noticing [their] presence." [Dkt. 22 at 5]. Such movement suggests Mr. Wynn was trying to distract from or distance himself from the vehicle because the vehicle itself or its contents evidenced some criminal conduct.

Even further, as in *Hampton* and *Wiggins*, the Detectives smelled marijuana coming from Mr. Wynn's vehicle. Mr. Wynn initially deflected the Detective's attention from the vehicle and directed it towards him by exiting the vehicle upon their approach. [Dkt. 21, at 3]. After reentering the vehicle at the Detective's instruction, Mr. Wynn admitted to the Detectives that he had been smoking marijuana and that there was marijuana in the vehicle. *Id.* at 3. He also acknowledged that there was a small amount of marijuana in the center console in plain view of the Detectives. *Id.* Defendant does not allege that he had, claimed to have had or showed the Detectives a marijuana prescription. Furthermore, before approaching Mr. Wynn's vehicle, the Detectives' supervisor informed them that Mr. Wynn had been federally prosecuted following a narcotics and firearms investigation. [Dkt. 22 at 9]. Considered in their totality, the Court finds that Mr. Winn's prior narcotics trafficking conviction, furtive behavior, and admission that he was engaging in illegal conduct were circumstances constituting a reasonable basis for the Detectives to believe that they could expect to find additional contraband in the vehicle.

Notwithstanding these facts, which Mr. Wynn does not contest, Mr. Wynn argues that Connecticut's decriminalization of small quantities of marijuana and legalization of

medical marijuana renders the facts surrounding the search insufficient to establish probable cause. [Dkt. 21 at 16]. Additionally, Mr. Wynn contends that, even if the odor of marijuana established probable cause, the Detectives improperly searched the trunk of his vehicle because once they recovered the bag of marijuana from the center console in the passenger compartment of the vehicle, they had identified the marijuana Mr. Wynn admitted to having and responsible for the odor and, as such, no longer had probable cause to further search the vehicle. [Dkt. 21 at 9-15].

1. Impact of Connecticut Marijuana Decriminalization Statute

In June 2011, Connecticut decriminalized possession of one-half ounce or less of marijuana. *See* Conn. Gen. Stat. §§ 21a-279a. Mr. Wynn argues that, as a result of this decriminalization and the legality of the palliative use of marijuana in Connecticut, the smell and presence of 0.69 grams of marijuana cannot establish probable cause. [Dkt. 21 at 16].

Mr. Wynn cites to several state cases finding the smell of marijuana insufficient to establish probable cause given the decriminalization of possession of certain amounts of marijuana. *Id.* (citing *Commonwealth v. Overmyer*, 11 N.E. 3d 1054, 1057-58 (Mass. 2014); *Commonwealth v. Cruz*, 945 N.E. 2d 899, (Mass. 2011); *State v. Crocker*, 97 P.3d 93, 96-98 (Alaska App. 2004); *People v. Brukner*, 25 N.Y.S. 3d 559, 571 (N.Y. Cit. Ct. 2015)). In *Commonwealth v. Overmyer*, the Massachusetts Supreme Court held that the smell of burnt or unburnt marijuana alone is not sufficient to constitute probable cause that a criminal amount of marijuana, rather than a non-criminal amount, is present in a vehicle, as is required to justify a search based on the automobile exception. 11 N.E. 3d at 1058 ("It does not follow that such an odor reliably predicts the presence of a criminal amount

of the substance, that is, more than one ounce, as would be necessary to constitute probable cause."). The Massachusetts Court also highlighted that, while earlier cases widely accepted that discovery of some controlled substances in a vehicle provided probable cause to search for additional controlled substances in the vicinity, since the 2008 initiative decriminalizing possession of one ounce or less of marijuana, the Massachusetts courts' decisions have rejected that proposition. *Id.*

The other two decisions cited by Mr. Wynn, an Alaska Court of Appeals decision and a City Court for the City of Ithaca decision, analyzed a search of a person's home and a search of an individual's person, respectively, and held that the smell of marijuana was insufficient to justify those searches.[4]

In contrast to those decisions, other states with medical marijuana or marijuana decriminalization statutes that have considered the issue have generally held that the smell of marijuana and/or a small quantity in plain view may still establish a reasonable belief that additional contraband is in the vicinity, justifying a search. In *State v. Sisco*, the Supreme Court of Arizona acknowledged the Arizona Medical Marijuana Act ("AMMA") making it lawful to use marijuana for medical purposes under specific terms

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[4] In *State v. Crocker*, the Alaska Court of Appeals held that "a judicial officer should not issue a warrant to search a person's home for evidence of marijuana possession unless the State's warrant application establishes probable cause to believe that the person's possession of marijuana exceeds the scope of possession that is constitutionally protected." 97 P.3d at 94. In *People v. Brukner*, the City Court for the City of Ithaca held that the smell of marijuana coming off a homeless man standing in a park did not give police probable cause to search that individual in light of the fact that the State's lowest level marijuana crime requires smoking in public or possession of more than 25 grams. 25 N.Y.S. 3d at 566, 572. The court highlighted that, under the automobile exception in New York, "the mere smell of marihuana still provides probable cause to arrest and search the occupant of a vehicle as well as probable cause to search the vehicle without a warrant," but this was not an automobile exception case and the court would not extend that analysis to individuals standing in a park. *Id.* at 569-70.

and conditions. 373 P.3d 549, 553 (Ariz. 2016). In considering whether the officer's detection of the odor of marijuana afforded probable cause to search a storage unit after passage of the AMMA, the court pointed out that "[p]robable cause [] does not turn on the 'innocence' or 'guilt' of particular conduct, but instead on the 'degree of suspicion that attaches to particular types of non-criminal acts." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983)). Thus, because the AMMA makes marijuana legal only in limited circumstances, the court concluded that "when an officer detects marijuana by sight or smell, the 'degree of suspicion that attached' remains high, notwithstanding the AMMA" and "[a] reasonable officer is therefore justified in concluding that such sight or smell is indicative of criminal activity, and thus probable cause exists." *Id.* at 553-54.

Similarly, the Supreme Court of Colorado held that the odor of marijuana is relevant to the totality of circumstances test and can contribute to a probable cause determination following the passage of "Amendment 64," which provides that it is not unlawful for a person over twenty-one years of age to possess one ounce or less of marijuana. *People v. Zuniga*, 372 P.3d 1052, 1057-58 (Colo. 2016). The court explained that "while a possible innocent explanation may impact the weight given to a particular fact in a probable cause determination, it does not wholly eliminate the fact's worth and require it to be disregarded." *Id.* at 1059. The court also noted that a substantial number of marijuana-related activities remain unlawful under Colorado law and, as such, "the odor of marijuana is still suggestive of criminal activity." *Id.* Considering the totality of circumstances—the vehicle occupants' anxious behavior and differing stories, the heavy odor of raw marijuana, and a drug sniffing dog's alert—the court concluded that a fair probability existed that a search of the vehicle would reveal contraband. *Id.* at 1059-60.

In *United States v. White*, the District Court for the District of Nevada came to the same conclusion. No. 2:15-cr-144, 2016 WL 3010824 (D. Nev. May 25, 2016). In *White*, the defendant argued that the smell of marijuana could not provide probable cause because he had a medical marijuana license and could legally possess marijuana such that the smell does not necessarily suggest illegal activity. *Id.* at *1. The court concluded that a "strong odor of marijuana in a vehicle does give officers probable cause to search the vehicle to ensure the Defendant was acting in accordance with the terms of the medical marijuana provisions" and "still suggests that a crime has occurred." *Id.* Accordingly, and in light of the totality of circumstances, the court concluded that the officers had probable cause to search the vehicle regardless of Defendant's medical marijuana license. *Id.*

The Court agrees with the reasoning in the Arizona, Colorado, and Nevada cases, and the numerous other cases to have come to the same conclusion.[5] As in those states,

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[5] Numerous other courts, including Illinois, Maryland, the Virgin Islands, Oregon, and California courts, have also held that the smell of marijuana contributes to a probable cause determination warranting a search of a vehicle notwithstanding marijuana decriminalization. *See, e.g.*, *In re O.S.*, 112 N.E. 3d 621, 634 (Ill. App. Ct. 2018) (concluding that "case law holding that the odor of marijuana is indicative of criminal activity remains viable notwithstanding the recent decriminalization of the possession of not more than 10 grams of marijuana" and upholding search of vehicle based on marijuana smell and observation of marijuana cigarette); *Robinson v. State*, 152 A.3d 661, 681 (Md. 2017) (holding that "a warrantless search of a vehicle is permissible upon detection of the odor of marijuana emanating from the vehicle" even after decriminalization of possession of less than ten grams of marijuana); *People v. Cannergeiter*, 65 V.I. 114, 132, 136 (V.I. 2016) (holding that "the Legislature's enactment of Act No. 77000 decriminalizing the possession of one ounce or less of marijuana in the Virgin Islands does not preclude law enforcement officers from stopping a vehicle based on the detection of an odor of marijuana emanating from the vehicle"); *State v. Smalley*, 225 P.3d 844,845-47 (Or. Ct. App. 2010) (holding that, despite State decriminalization of less than one ounce of marijuana, search of backpack in vehicle was supported by probable cause and therefore constitutional under the automobile exception based on officer's observation of strong marijuana odor); *People v. Strasburg*, 56 Cal. Rptr. 3d 306, 311 (Cal. Ct. App. 2007)

in Connecticut, a significant portion of marijuana-related conduct is still criminal. The possession of one-half an ounce to four ounces is a misdemeanor warranting up to one year of jail time. Conn. Gen. Stat. § 21a-279. Connecticut also has a per se drugged driving statute which criminalizes operation of a motor vehicle while under the influence of any drug. *Id.* at § 14-227a. Additionally, while possession of one-half ounce or less of marijuana has been decriminalized and warrants only a civil penalty for first and second offenses, it is still illegal. *Id.* at § 21a-279a. Thus, the smell of marijuana or observation of a small quantity of marijuana in plain view evinces illegal conduct and should be considered along with the other circumstances to determine whether probable cause exists.

2. Scope of The Search Supported by Probable Cause

Mr. Wynn also argues that, even if the Detectives initially had probable cause, the search must be broken down into increments, with probable cause supporting each increment of the search, and as soon as the Detectives found the marijuana in the center console of the vehicle accounting for the odor, it was no longer reasonable for them to believe that additional contraband would likely be found elsewhere. [Dkt. 21 at 9-12]. Mr. Wynn invokes *United States v. Ross* and *California v. Acevedo* in support of this argument.

In *United States v. Ross*, the Supreme Court considered the extent to which police officers who have lawfully stopped a vehicle and who have probable cause to believe that contraband is concealed somewhere in it may search the compartments and containers

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(holding that California's medical marijuana act "provides a limited immunity—not a shield from reasonable investigation" and odor of marijuana coming from a parked car provided police with probable cause to search the vehicle and its occupants).

in that vehicle. 456 U.S. 798, 823 (1982). The Court held that "[t]he scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause." *Id.* The scope of the search "is defined by the object of the search and the places in which there is probable cause to believe it may be found." *Id.* at 824. Accordingly, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Id.* at 825. In other words, police may conduct a "probing search" of compartments and containers within the automobile so long as the search is supported by probable cause. *Id.* at 800. In *California v. Acevedo*, the Supreme Court explained that, where the police have probable cause to believe that a container in a vehicle contains contraband, as opposed to the vehicle generally, a search of that container only, and not the rest of the vehicle, is reasonable. 500 U.S. 565, 580 (1991).

Mr. Wynn contends that the reasoning in *Ross* and *Acevedo* logically requires that "each facet of a search [] be supported by probable cause [such] that once police have located the item of contraband for which they had probable cause to search, the search must end—unless there is probable cause to believe that there is additional contraband to find." [Dkt. 21 at 10]. The distinction at the heart of *Ross and Acevedo*, however, is the existence of probable cause to believe evidence was located in a particular place or within a particular container as opposed to the vehicle generally. *Arizona v. Gant* makes clear that, "[i]f there is probable cause to believe a vehicle contains evidence of criminal activity, [*Ross*] authorizes a search of any area of the vehicle in which the evidence might be found." 556 U.S. 332, 347 (2009). Mr. Wynn's contention would be correct to the extent

police are looking for a specific individual, item, or piece of evidence—if police are looking for a specific undocumented alien known to be traveling in a vehicle, to expand on the example in *Ross*, 456 U.S. at 824, it makes sense that, once police find that individual in the passenger compartment, the police no longer have probable cause to continue the search to the trunk. But if police have probable cause to believe there are an unspecified number of undocumented aliens being transported in a vehicle, finding one or more individuals in the passenger compartment does not mean that it would then be unreasonable to believe that others are stowed away in the trunk. Similarly, if police have probable cause to believe there are drugs in a vehicle, without a basis to believe that the drugs are limited to a specific quantity, location, or container, it does not follow that the police would no longer have probable cause to search for drugs upon finding some quantity.

Indeed, courts have concluded that finding smaller amounts of contraband in a vehicle can provide probable cause to believe that there may be additional contraband in that vehicle and warrants a search of the trunk. *See, e.g.*, *United States v. Reed*, 882 F.2d 147, 149 (5th Cir. 1989) (smell of burnt marijuana supported search of entire vehicle, including locked compartment in the vehicle's rear); *United States v. Loucks*, 806 F.2d 208, 210-11 (10th Cir. 1986) (smell of burning marijuana cigarettes and a small bag of marijuana justified a trunk search); *United States v. Brunett*, 791 F.2d 64, 67 (6th Cir. 1986) (small quantity of marijuana on floorboard of passenger compartment supplied probable cause to search trunk). For instance, in *United States v. Turner*, the D.C. Circuit rejected the defendant's argument that a "personal use" quantity of marijuana in the passenger compartment of the car did not provide probable cause to search the trunk. 119 F.3d 18,

20 (D.C. Cir. 1997). The government asserted that the smell of burnt marijuana coming from the car, the pieces of torn cigar paper on the floor in front of the driver's seat, and the Ziplock bag of green weed material on the floor behind the seat established probable cause. *Id.* The defendant argued this evinced nothing more than personal use and that users, as opposed to distributors, would keep their drugs within their control rather than in the trunk. *Id.* In upholding the search of the trunk, the court explained that, "[w]hile it may be true that evidence of narcotics distribution would constitute even stronger cause to believe additional contraband had been secreted in the trunk, the evidence in this case was sufficient to establish a 'fair probability' that Turner might have hidden additional drugs not necessary for his current consumption in areas out of plain sight, including in the trunk of the car." *Id.*

Such cases show that finding or seeing in plain view some quantity of marijuana can establish probable cause to search an entire vehicle for evidence of illegal possession, as is the case here considering the totality of circumstances. The Detectives were aware of Mr. Wynn's prior narcotics and firearms prosecution and, when they approached, Mr. Wynn immediately stood up, directing the Detective's attention away from the vehicle. The Detectives observed the smell of marijuana emanating from the vehicle and Mr. Wynn admitted that he had been smoking. Mr. Wynn further stated that there was marijuana in the vehicle, but did not indicate that the marijuana he was speaking of was in close proximity and within the Detectives' plain view. Contrary to Mr. Wynn's contention, the Detectives' observation of the small quantity of marijuana in plain view did not render it unreasonable for them to believe that they would find additional quantities or other contraband evidencing illegal possession. Rather, the obvious smell

of marijuana coming from the car along with the marijuana in plain view and Mr. Wynn's history, behavior, and comments, supported their continued search. Consequently, the Court holds that the search conducted was constitutional.

C. Search Incident To A Lawful Arrest

The United States also claims in passing and without real support that the search was constitutional under the search incident to arrest exception. Because the United States' arguments focus on the automobile exception, and the Court has concluded that the search was constitutional under that exception, the Court declines to analyze the applicability of the search incident to arrest exception.

IV. Conclusion

For the foregoing reasons, the Court DENIES Defendant's Motion to Suppress.

IT IS SO ORDERED.

Vanessa Lynne Bryant Vanessa Bryant 2019.05.06 15:24:48 -04'00'

Hon. Vanessa L. Bryant
United States District Judge

Dated at Hartford, Connecticut: this 6th day of May 2019.